

Scott Wert

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February 1, 2006

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IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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In re: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) No. 01-2257-PBS
PRICE LITIGATION,)
)
THIS DOCUMENT RELATES TO ALL)
ACTIONS,)
_____)

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PURSUANT TO PROTECTIVE ORDER

TELEPHONIC DEPOSITION OF SCOTT WERT

WEDNESDAY, FEBRUARY 1, 2006

Telephonic deposition of SCOTT WERT, taken
on behalf of Johnson & Johnson, 10834 International
Drive, Suite 200, Rancho Cordova, California, at
10:00 a.m., on Wednesday, February 1, 2006, before
RICHARD M. RAKER, CSR No. 3445, Certified Shorthand
Reporter.

Henderson Legal Services
(202) 220-4158

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3 FOR THE PLAINTIFF:	3 EXAMINATION PAGE
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1 APPEARANCES OF COUNSEL: (CONTINUED)	1 MORNING SESSION
2	2
3 FOR THE DEPONENT:	3 SCOTT WERT,
4 LEWIS, BRISBOIS, BISGAARD & SMITH	4 having first been duly sworn, was examined and
5 BY: LANCE A. SELFRIDGE, ESQ.	5 testified as follows:
6 221 N. Figueroa Street, Suite 1200	6
7 Los Angeles, California 90012	7 MR. SELFRIDGE: At the outset of this
8 (213) 680-5003	8 deposition, I am advising all counsel present on
9	9 behalf of my client, Health Net, that Health Net
10 ALSO PRESENT: KAREN FERRO	10 will be marking the entire transcript of this
11	11 deposition highly confidential pursuant to the
12	12 protective order on file in this litigation due to
13	13 the fact that this deposition is expected to involve
14	14 the disclosure of information which is confidential
15	15 and which constitutes Health Net's trade secrets.
16	16 So I'll ask Mr. Raker, the court reporter,
17	17 to place a designation "highly confidential" on the
18	18 caption page of this deposition.
19	19
20	20 EXAMINATION
21	21 BY MR. MANGI:
22	22 Q. Mr. Wert, good morning California time. My

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<p style="text-align: right;">6</p> <p>1 name is Adeel Mangi, as you've just heard. I 2 represent Johnson & Johnson in this litigation. We 3 are doing this deposition by phone today, so I'd ask 4 that any questions I ask that are unclear because of 5 problems with the transmission, please let me know 6 and I'll repeat them. Okay? 7 A. Okay. 8 Q. Similarly, if any questions I ask are 9 unclear to you substantively, please let me know, 10 and I'll do my best to rephrase it. 11 A. Okay. 12 Q. I didn't get your answer to the last 13 question, Mr. Wert. 14 A. "Okay." 15 Q. And now's a good time to mention, since 16 we're on a phone deposition, it's especially 17 important to answer questions verbally, both so I 18 hear it and the reporter can take it down. 19 A. Sure. 20 Q. Are you currently employed, Mr. Wert? 21 A. Yes. 22 Q. Who is your employer?</p>	<p style="text-align: right;">8</p> <p>1 Q. Between -- in what -- did you complete the 2 bachelor's degree in 1982? 3 A. Yes. 4 Q. Were you employed between 1982 and '93? 5 A. I was a military officer from December of 6 1982 through August of 1987. 7 Q. Did your role in the military involve 8 health insurance or the provision of healthcare 9 services of drugs in any way? 10 A. No. 11 Q. What did you do after you left the 12 military in 1987? 13 A. I enrolled at the University of Arizona. 14 Q. That was in your Pharm.D program, correct? 15 A. Correct. 16 Q. You were a full-time student until you 17 completed that degree in '93? 18 A. That's correct. 19 Q. Did you then immediately start the 20 residency at the VA Hospital that you completed in 21 '94? 22 A. Correct.</p>
<p style="text-align: right;">7</p> <p>1 A. Health Net Pharmaceutical Services. 2 Q. What is your title at present? 3 A. Vice president trade relations. 4 Q. How long have you held that position? 5 A. Since November of 2001. So that would be 6 a little more than four years. 7 Q. How long have you been employed at Health 8 Net Pharmaceutical Services? 9 A. I'm just trying to think. It's a little 10 bit difficult to answer because I started working 11 for a company that ended up merging with Health Net 12 and Health Net Pharmaceutical Services. 13 Q. Let's come to it another way. 14 A. Okay. 15 Q. Can you describe to me your education 16 after high school, please. 17 A. I have a degree -- a BA degree in 18 psychology from Franklin & Marshall College in 1982. 19 I have a Pharm.D from the University of Arizona in 20 1993. I have a pharmacy practice residency 21 completed at the VA Hospital in Tucson, Arizona, in 22 1994.</p>	<p style="text-align: right;">9</p> <p>1 Q. In the course of that residency, did you 2 have any role in relation to the acquisition or 3 purchase of drugs? 4 A. No. 5 Q. What did you do after completing that 6 residency? 7 A. I joined -- I was hired by Intergroup 8 Healthcare Corporation, a managed care organization 9 located at the time in Tucson, Arizona. I was hired 10 as a clinical pharmacist. 11 Q. How long were you with Intergroup? 12 A. It was six months, and then the company 13 merged with Foundation Health and subsequently 14 Foundation Health became Health Net. So I 15 essentially spent my entire career within Health 16 Net. 17 Q. As a clinical pharmacist starting with 18 Intergroup -- how long did you hold that position, 19 by the way, clinical pharmacist? 20 A. Six months. 21 Q. What were your responsibilities in that 22 position?</p>

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<p style="text-align: right;">10</p> <p>1 A. To -- to participate in the pharmacy and</p> <p>2 therapeutics committee, to look at the cost and</p> <p>3 utilization of pharmaceuticals within the health</p> <p>4 plan, to participate in the design of pharmacy</p> <p>5 benefits.</p> <p>6 Q. Did Intergroup ever have a staff model HMO</p> <p>7 during the time you were there?</p> <p>8 A. I'm trying to remember. At the time,</p> <p>9 Intergroup did own a multispecialty clinic group.</p> <p>10 So they owned Thomas-Davis medical clinics, which</p> <p>11 was a 10- to 12-site specialty clinic group</p> <p>12 throughout the state of Arizona.</p> <p>13 Q. Were you involved at all in purchases of</p> <p>14 drugs for Intergroup on behalf of that staff model?</p> <p>15 A. No.</p> <p>16 Q. Do you have any knowledge as to what</p> <p>17 amount Intergroup was paying to acquire drugs?</p> <p>18 A. No. We didn't -- as I recall, we did not</p> <p>19 buy -- we did not purchase drugs as part of that</p> <p>20 arrangement. It was all reimbursement-based.</p> <p>21 Q. You were a clinical pharmacist for six</p> <p>22 months.</p>	<p style="text-align: right;">12</p> <p>1 A. No. Okay. Wait. I need to correct that.</p> <p>2 Yeah, because in 2001 I was the vice president of</p> <p>3 trade relations.</p> <p>4 Q. Okay.</p> <p>5 A. So it would have been probably in 1999,</p> <p>6 you know, two years prior to the trade relations</p> <p>7 position when the position I currently held as</p> <p>8 director was upgraded to vice president.</p> <p>9 Q. So in approximately 1999, you became a</p> <p>10 vice president in charge of pharmacy services?</p> <p>11 A. Yes.</p> <p>12 Q. And then in 2001, you became a vice</p> <p>13 president in charge of trade relations.</p> <p>14 A. Correct.</p> <p>15 Q. You hold that position to the present</p> <p>16 time?</p> <p>17 A. Yes.</p> <p>18 Q. What was your responsibilities as a</p> <p>19 director of pharmacy and then as VP of pharmacy?</p> <p>20 A. As a director of pharmacy, I was</p> <p>21 responsible for the overall cost and utilization of</p> <p>22 pharmaceuticals within the health plan; responsible</p>
<p style="text-align: right;">11</p> <p>1 A. Yes.</p> <p>2 Q. What was your next position?</p> <p>3 A. Director of pharmacy.</p> <p>4 Q. And that was with Foundation?</p> <p>5 A. Yes.</p> <p>6 Q. How long did you hold that position?</p> <p>7 A. I want to say until the early 1990s. I</p> <p>8 can't remember exactly. I was promoted to vice</p> <p>9 president at that time, so it was essentially the</p> <p>10 same position but it was now a vice-president level.</p> <p>11 Q. So just to be clear, you started in that</p> <p>12 position as director of pharmacy in approximately</p> <p>13 1995; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know approximately how long you</p> <p>16 were in that position?</p> <p>17 A. Until, I would say, 1991, and then it</p> <p>18 became a vice-presidential position.</p> <p>19 Q. You mean to say 2001?</p> <p>20 A. Oh, wait. I'm sorry. Yes, 2001. Sorry.</p> <p>21 Q. And in 2001 you became a VP of pharmacy</p> <p>22 services?</p>	<p style="text-align: right;">13</p> <p>1 for any strategies regarding the benefit, overall</p> <p>2 management responsibility for the pharmacy benefit.</p> <p>3 Q. And did those responsibilities change when</p> <p>4 you became VP?</p> <p>5 A. They were expanded to some degree,</p> <p>6 because, at the time, Foundation Health was</p> <p>7 expanding and acquiring different health plans, and</p> <p>8 so I had expanded responsibilities for what was then</p> <p>9 Intergroup of Utah, which was a plan that Foundation</p> <p>10 Health owned at the time -- it's no longer owned --</p> <p>11 QualMed of Colorado and QualMed of New Mexico from a</p> <p>12 pharmacy management perspective.</p> <p>13 Q. Now, you said that one of your</p> <p>14 responsibilities in these two positions pertained to</p> <p>15 your responsibility for overall cost, correct?</p> <p>16 A. Yes.</p> <p>17 Q. What are you referring to when you say</p> <p>18 "overall cost"?</p> <p>19 A. I'm referring to the net cost paid by the</p> <p>20 health plan for pharmaceuticals. So not from a</p> <p>21 purchasing perspective but from a reimbursement</p> <p>22 perspective.</p>

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<p style="text-align: right;">14</p> <p>1 Q. Now, are you referring there only to</p> <p>2 reimbursement paid to retail pharmacies, or are you</p> <p>3 also including reimbursement for drugs administered</p> <p>4 in physicians' offices and hospitals?</p> <p>5 A. For retail pharmacies only.</p> <p>6 Q. At any point in your career with Health</p> <p>7 Net Pharmaceutical Services or its predecessors,</p> <p>8 have you had any responsibility in relation to the</p> <p>9 cost to the client for reimbursing drugs</p> <p>10 administered in physicians' offices?</p> <p>11 A. Not -- not reimbursing them. My</p> <p>12 involvement would be on the rebate side. So if we</p> <p>13 had a rebate contract for one of those drugs, then I</p> <p>14 could help, through rebate contracts, reduce the net</p> <p>15 cost of those drugs.</p> <p>16 Q. Let's -- okay. We'll come back to that in</p> <p>17 a minute. Let's just complete the chronology first</p> <p>18 on your employment history. In 2001 you became the</p> <p>19 director of trade relations. What are your</p> <p>20 responsibilities in that position?</p> <p>21 A. They are primarily to manage the</p> <p>22 relationships that the health plan -- that the --</p>	<p style="text-align: right;">16</p> <p>1 Services, the company was called Integrated</p> <p>2 Pharmaceutical Services. That was the name of the</p> <p>3 company when the company was formerly known as</p> <p>4 Foundation Health. So at that time, IPS, as it was</p> <p>5 known, did rebate contract on behalf of the health</p> <p>6 plans. I would say that it started around 1995.</p> <p>7 Q. So you are personally aware of a rebate</p> <p>8 contract between Integrated, which is their</p> <p>9 predecessor to Health Net Pharmaceutical Services,</p> <p>10 from at least the 1995 time period onwards, correct?</p> <p>11 A. I'm aware that IPS did the contracting.</p> <p>12 I'm not -- I don't have the contracts.</p> <p>13 Q. And it's fair to say that the practice of</p> <p>14 contracting with manufacturers for rebates may have</p> <p>15 started prior to that time, you just don't know,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. Now, why do drug manufacturers pay rebates</p> <p>19 to Health Net Pharmaceutical Services or its</p> <p>20 predecessors?</p> <p>21 A. Well, I can't speak on behalf of the</p> <p>22 pharmaceutical manufacturers about why they would do</p>
<p style="text-align: right;">15</p> <p>1 that Health Net has with pharmaceutical companies.</p> <p>2 That primarily entails rebate contracting.</p> <p>3 Q. Anything else?</p> <p>4 A. No.</p> <p>5 Q. So let's talk about these -- the rebate</p> <p>6 contracts which you just touched on a moment ago.</p> <p>7 Does -- Health Net Pharmaceutical Services, is that</p> <p>8 the entity that enters into contracts with</p> <p>9 manufacturers for rebates?</p> <p>10 A. Yes.</p> <p>11 Q. Does Health Net Pharmaceutical Services</p> <p>12 enter into those contracts on behalf of Health Net?</p> <p>13 A. Yes.</p> <p>14 Q. And that's -- and Health Net</p> <p>15 Pharmaceutical Services also serves as the internal</p> <p>16 PBM for Health Net, correct?</p> <p>17 A. Correct.</p> <p>18 Q. How -- when did Health Net Pharmaceutical</p> <p>19 Services begin entering into contracts with</p> <p>20 manufacturers -- the drug manufacturers for rebate?</p> <p>21 A. Well, I don't know exactly. However,</p> <p>22 prior to being called Health Net Pharmaceutical</p>	<p style="text-align: right;">17</p> <p>1 it. However, I would suspect that part of it would</p> <p>2 be to develop a good relationship with HNPS and the</p> <p>3 health plans. The other would be our ability to</p> <p>4 control the market share of the products that we</p> <p>5 prefer and therefore earn rebates on.</p> <p>6 Q. When you refer to ability to control</p> <p>7 market share of products that you prefer, are you</p> <p>8 referring there to formulary preferences or</p> <p>9 formulary status?</p> <p>10 A. Yes.</p> <p>11 Q. And how does Health Net Pharmaceutical</p> <p>12 Services take account of rebates when making</p> <p>13 formulary decisions?</p> <p>14 A. It is one of the elements that get</p> <p>15 considered in the overall pharmacy and therapeutics</p> <p>16 process to determine a drug that would be considered</p> <p>17 on formulary and preferred.</p> <p>18 Q. Now, the existence of these rebate</p> <p>19 contracts between drug manufacturers and health</p> <p>20 insurance companies or PBMs is something that's</p> <p>21 commonly known in the industry, correct?</p> <p>22 A. Yes.</p>

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<p style="text-align: right;">18</p> <p>1 Q. And the existence of these arrangements</p> <p>2 has been commonly known in the industry since at</p> <p>3 least the early 1990s, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Now, what factors determine the amount of</p> <p>6 rebate that a manufacturer will pay Health Net</p> <p>7 Pharmaceutical Services or its predecessors?</p> <p>8 A. Well, there would -- again, I can't speak</p> <p>9 on behalf of the pharmaceutical industry, but I</p> <p>10 would say some of the factors would include</p> <p>11 limitations based on federal regulation, the</p> <p>12 negotiating ability of the health plan, the number</p> <p>13 of preferred products in the therapeutic category of</p> <p>14 the drug in question, the ability of the health plan</p> <p>15 to move market share to preferred products.</p> <p>16 Q. Now, when you refer to negotiating ability</p> <p>17 and also to the number of therapeutic products in a</p> <p>18 particular path, we're essentially talking about</p> <p>19 leverage, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Health Net will have more leverage and</p> <p>22 will be able to exact higher rebates when it's</p>	<p style="text-align: right;">20</p> <p>1 competitors that are therapeutically interchangeable</p> <p>2 or therapeutic alternatives, Health Net will have a</p> <p>3 stronger leverage in its negotiations with</p> <p>4 manufacturers, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And the reason for that is simply that</p> <p>7 Health Net has choices and can choose to put other</p> <p>8 drugs on its formulary, correct?</p> <p>9 A. Correct.</p> <p>10 Q. That's all a matter of simple economics,</p> <p>11 right?</p> <p>12 MR. SELFRIDGE: Well, I'll object to that</p> <p>13 as calling for speculation and being vague.</p> <p>14 MR. MANGI: I'll withdraw the question.</p> <p>15 Let me put it another way.</p> <p>16 Q. The situation that we've just described,</p> <p>17 the fact that there is more leverage in one</p> <p>18 situation versus the other, that's common to all</p> <p>19 relationships between manufacturers and PBMs or</p> <p>20 health plans across the industry, correct?</p> <p>21 A. I think generally so.</p> <p>22 Q. Now, we talked about the situation where</p>
<p style="text-align: right;">19</p> <p>1 dealing with a manufacturer of a drug that has other</p> <p>2 therapeutic alternatives in the market as opposed to</p> <p>3 a manufacturer whose drug has no competition,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. And similarly, Health Net will be able to</p> <p>7 exact the highest rebates when dealing with the</p> <p>8 manufacturer of a generic product for which there</p> <p>9 will be a number of competitors in the market,</p> <p>10 correct.</p> <p>11 A. I'm sorry. I didn't quite understand that</p> <p>12 question.</p> <p>13 Q. Let me back up a minute.</p> <p>14 A. Okay.</p> <p>15 Q. One possible scenario is where you're</p> <p>16 dealing with a drug that has no competition. Okay?</p> <p>17 When you're dealing with a drug of that kind, it's</p> <p>18 fair to say that Health Net's leverage is at a low</p> <p>19 end, correct?</p> <p>20 A. Correct.</p> <p>21 Q. As opposed to that situation, when you're</p> <p>22 dealing with a branded drug that has other branded</p>	<p style="text-align: right;">21</p> <p>1 there is a drug with no competition. We've talked</p> <p>2 about the situation where there is a branded drug</p> <p>3 that does have competition of therapeutic</p> <p>4 alternatives. A third possibility is when you're</p> <p>5 dealing with generic drugs, right?</p> <p>6 A. Yes.</p> <p>7 Q. In that situation, Health Net will have</p> <p>8 the strongest leverage because there will be many</p> <p>9 different manufacturers that can provide the drug in</p> <p>10 question; is that correct?</p> <p>11 A. Well, yes, although in contracting with</p> <p>12 the brand name manufacturers, we really don't</p> <p>13 consider the availability of generics in the</p> <p>14 marketplace, per se.</p> <p>15 Q. Does Health Net Pharmaceutical Services</p> <p>16 contract for rebates with manufacturers of generic</p> <p>17 drugs in relation to those generic drugs' formulary</p> <p>18 placement?</p> <p>19 A. No.</p> <p>20 Q. Now, as you mentioned earlier, the reason</p> <p>21 -- one of the reasons why manufacturers pay these</p> <p>22 rebates to Health Net Pharmaceutical Services and</p>

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<p style="text-align: right;">22</p> <p>1 entities like it is because they have the ability to</p> <p>2 move market share, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And it can do that through -- health and</p> <p>5 pharmaceutical services can do that through its</p> <p>6 formulary placement, tiers, preferences and so on --</p> <p>7 A. Yes.</p> <p>8 Q. -- right?</p> <p>9 A. Yes.</p> <p>10 Q. As you've discussed, the existence of</p> <p>11 those arrangements and those dynamics is something</p> <p>12 that's been well known in the industry for a long</p> <p>13 time, since at least the early '90s, right?</p> <p>14 A. Correct.</p> <p>15 Q. Now, it's similarly well known, isn't it,</p> <p>16 that manufacturers also pay a rebate to other</p> <p>17 entities in the marketplace who can similarly move</p> <p>18 market share, correct?</p> <p>19 MR. SELFRIDGE: I object to that on the</p> <p>20 grounds that it is vague. I'm not sure what you</p> <p>21 mean by "other entities in the marketplace."</p> <p>22 MR. MANGI: Let me rephrase the question.</p>	<p style="text-align: right;">24</p> <p>1 Q. That's the second category. And certainly</p> <p>2 staff model HMOs, they can receive rebates from drug</p> <p>3 manufacturers, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And similarly, physicians in relation to</p> <p>6 drugs that are administered in physicians' offices,</p> <p>7 they can also receive rebates from drug</p> <p>8 manufacturers, correct?</p> <p>9 MR. WILLIAMS: Same objection.</p> <p>10 THE WITNESS: I don't actually know that.</p> <p>11 BY MR. MANGI:</p> <p>12 Q. Do you have any dealings with physicians</p> <p>13 in your current capacity?</p> <p>14 A. No.</p> <p>15 Q. And indeed, your previous capacities were</p> <p>16 also dealing with retail only, correct?</p> <p>17 A. Correct.</p> <p>18 (Interruption)</p> <p>19 BY MR. MANGI:</p> <p>20 Q. Counsel is correct?</p> <p>21 A. Correct.</p> <p>22 Q. But you are aware of the fact that, in the</p>
<p style="text-align: right;">23</p> <p>1 Q. To your knowledge, do manufacturers pay</p> <p>2 rebates to entities other than PBMs or health</p> <p>3 insurance plans in relation to formulary placement?</p> <p>4 MR. WILLIAMS: I'll object as calling for</p> <p>5 speculation.</p> <p>6 BY MR. MANGI:</p> <p>7 Q. You can answer.</p> <p>8 MR. SELFRIDGE: You should only answer if</p> <p>9 you actually know the answer. Don't guess at it.</p> <p>10 THE WITNESS: Yeah, there are other</p> <p>11 entities.</p> <p>12 BY MR. MANGI:</p> <p>13 Q. What sort of entities are you aware of who</p> <p>14 receive rebates from drug manufacturers?</p> <p>15 A. Long-term-care pharmacies.</p> <p>16 Q. Any other entities?</p> <p>17 A. No.</p> <p>18 Q. Are you aware that mail-order pharmacies</p> <p>19 can receive rebates from manufacturers?</p> <p>20 MR. WILLIAMS: Same objection.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. MANGI:</p>	<p style="text-align: right;">25</p> <p>1 market, manufacturers will pay a rebate to entities</p> <p>2 who can affect market share, right?</p> <p>3 A. Right.</p> <p>4 Q. And the existence of such arrangements</p> <p>5 with an array of different entities has been well</p> <p>6 known in the industry for a long time, since at</p> <p>7 least the early '90s, correct?</p> <p>8 MR. WILLIAMS: Objection; calls for</p> <p>9 speculation.</p> <p>10 MR. SELFRIDGE: I'll join in that.</p> <p>11 You can answer.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. MANGI:</p> <p>14 Q. Now, how is the amount of rebate that</p> <p>15 Health Net Pharmaceutical Services receives on any</p> <p>16 given drug or group of drugs determined?</p> <p>17 A. The vast majority of the contracts are for</p> <p>18 a certain percentage off of the WAC price of a unit</p> <p>19 of the drug.</p> <p>20 Q. What determines what that percentage will</p> <p>21 be?</p> <p>22 A. Again, it's sort of -- I can't</p>

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<p style="text-align: right;">26</p> <p>1 specifically speak for the pharma industry since</p> <p>2 they're the one giving the percentage, but --</p> <p>3 MR. SELFRIDGE: I don't want you to</p> <p>4 speculate. If you can answer, you can answer, but</p> <p>5 don't speculate.</p> <p>6 THE WITNESS: Okay. Well, I thought we've</p> <p>7 answered the question previously, but should I go</p> <p>8 through the same --</p> <p>9 BY MR. MANGI:</p> <p>10 Q. Are you referring to the same factors that</p> <p>11 affect the relative leverage of the parties, such as</p> <p>12 the availability of therapeutic equivalence and</p> <p>13 factors such as that?</p> <p>14 A. Yes.</p> <p>15 Q. Do the contracts that Health Net</p> <p>16 Pharmaceutical Services enter into with drug</p> <p>17 manufacturers provide for one specific percentage in</p> <p>18 relation to WAC that is then applied to all drugs</p> <p>19 that that manufacturer puts into the market that are</p> <p>20 on Health Net formulary?</p> <p>21 A. No. They are -- they are rebate</p> <p>22 percentages determined by drug.</p>	<p style="text-align: right;">28</p> <p>1 affect the rebate that other entities in the market</p> <p>2 can receive from drug manufacturers, correct?</p> <p>3 MR. WILLIAMS: I'll object as calling for</p> <p>4 speculation.</p> <p>5 MR. SELFRIDGE: Join.</p> <p>6 BY MR. MANGI:</p> <p>7 Q. You can answer.</p> <p>8 A. Correct.</p> <p>9 Q. And indeed, similarly it's fair to assume</p> <p>10 that the amount of rebate that all entities in the</p> <p>11 market receive from drug manufacturers will vary</p> <p>12 from drug to drug.</p> <p>13 MR. SELFRIDGE: Same objection.</p> <p>14 MR. WILLIAMS: I'll join in that.</p> <p>15 BY MR. MANGI:</p> <p>16 Q. You can answer.</p> <p>17 A. I couldn't say all of them.</p> <p>18 Q. Well, is -- well, withdraw that. Let me</p> <p>19 ask you a different question.</p> <p>20 When Health Net Pharmaceutical Services</p> <p>21 enters into rebate contracts with manufacturers,</p> <p>22 what time period do those contracts generally apply</p>
<p style="text-align: right;">27</p> <p>1 Q. So the amount of -- withdraw that.</p> <p>2 Now, the rebate that Health Net</p> <p>3 Pharmaceutical Services gets from manufacturers on</p> <p>4 drugs reduces the overall costs to Health Net in</p> <p>5 relation to reimbursing for pharmaceuticals,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. And the extent to which that cost basis is</p> <p>9 reduced will vary from drug to drug depending on the</p> <p>10 extent of the rebate that Health Net is able to</p> <p>11 negotiate for that drug, correct?</p> <p>12 A. Correct.</p> <p>13 Q. And the amount of rebate that Health Net</p> <p>14 can negotiate for any particular drug will vary</p> <p>15 based on factors such as the availability of</p> <p>16 therapeutic alternatives in the market, correct?</p> <p>17 A. Correct.</p> <p>18 Q. It's fair to assume, isn't it, that that</p> <p>19 negotiation dynamic is not unique to Health Net,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. In other words, similar factors will</p>	<p style="text-align: right;">29</p> <p>1 to?</p> <p>2 A. They are generally of the term one to</p> <p>3 three years.</p> <p>4 Q. After those contracts expire, Health Net</p> <p>5 will evaluate them and potentially renegotiate them?</p> <p>6 A. Yes.</p> <p>7 Q. If, in the interim, changes have occurred</p> <p>8 in the marketplace -- for example, if a drug that</p> <p>9 previously had no competition now has therapeutic</p> <p>10 alternatives -- that will be a significant factor in</p> <p>11 giving Health Net more leverage, then, to exact</p> <p>12 higher rebates, right?</p> <p>13 A. Potentially.</p> <p>14 Q. Now, all of the rebate contracts at</p> <p>15 present are tied to WAC, or wholesale acquisition</p> <p>16 cost; is that correct?</p> <p>17 A. No, not all.</p> <p>18 Q. What proportion of the rebate contracts</p> <p>19 are pegged to WAC?</p> <p>20 A. Greater than 95 percent.</p> <p>21 Q. What is the benchmark to which the other 5</p> <p>22 percent -- or benchmarks to which the other 5</p>

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<p style="text-align: right;">30</p> <p>1 percent are tied?</p> <p>2 A. AWP.</p> <p>3 Q. What is the basis for some contracts being</p> <p>4 AWP-based and some being WAC-based?</p> <p>5 A. Strictly the determination of the pharma</p> <p>6 company offering the contract.</p> <p>7 Q. What is your understanding as to what WAC</p> <p>8 is?</p> <p>9 A. Well, it's the wholesale acquisition cost</p> <p>10 of the product as determined by the pharmaceutical</p> <p>11 manufacturer as the cost at which a wholesaler could</p> <p>12 buy the product -- would obtain the product from the</p> <p>13 pharmaceutical company.</p> <p>14 Q. Now, you're aware, of course, that that</p> <p>15 price can then be lowered by, for example, prompt-</p> <p>16 pay discounts to the wholesalers, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Similarly, drug manufacturers may provide</p> <p>19 rebates and discounts to other entities in the</p> <p>20 marketplace that will reduce their acquisition costs</p> <p>21 below WAC, correct?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">32</p> <p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. And that amount will vary from drug to</p> <p>4 drug and from entity to entity depending on the</p> <p>5 particular rebate arrangement the manufacturer in</p> <p>6 question has with the entity in question, correct?</p> <p>7 A. Correct.</p> <p>8 Q. It's fair to say, isn't it, that there is</p> <p>9 no one rule that can be applied across the board to</p> <p>10 govern how much rebate or discount all entities in</p> <p>11 the market receive, correct?</p> <p>12 MR. WILLIAMS: Objection; calls for</p> <p>13 speculation.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. MANGI:</p> <p>16 Q. Similarly, it's fair to say that there is</p> <p>17 -- well, withdraw that.</p> <p>18 Now, what about AWP? What is your</p> <p>19 understanding of what AWP is?</p> <p>20 A. Well, the average wholesale price of a</p> <p>21 drug as -- I'm not sure exactly who determines it,</p> <p>22 but it is published by national database houses such</p>
<p style="text-align: right;">31</p> <p>1 Q. And -- withdraw that.</p> <p>2 The amount by which manufacturer rebates</p> <p>3 will reduce the acquisition cost for drugs of</p> <p>4 various entities in the market will depend on how</p> <p>5 much rebate is paid to that entity in relation to</p> <p>6 the drug at issue, correct --</p> <p>7 MR. WILLIAMS: Objection; calls for</p> <p>8 speculation.</p> <p>9 BY MR. MANGI:</p> <p>10 Q. You can answer.</p> <p>11 A. Can you restate the question?</p> <p>12 Q. As we've discussed, the different entities</p> <p>13 in the marketplace that -- can get rebates from</p> <p>14 manufacturers, and those rebates or discounts will</p> <p>15 lower their acquisition costs for drugs, right?</p> <p>16 A. Yes.</p> <p>17 Q. And they will lower their acquisition</p> <p>18 costs for drugs below WAC, correct?</p> <p>19 A. Correct.</p> <p>20 Q. The extent to which their acquisition</p> <p>21 costs are lowered below WAC will depend on the</p> <p>22 amount of the rebate or discount that they receive,</p>	<p style="text-align: right;">33</p> <p>1 as First DataBank or Medi-Span.</p> <p>2 Q. Now, as mentioned, AWP stands for average</p> <p>3 wholesale -- but what is AWP? What is it really</p> <p>4 used for in the market?</p> <p>5 A. What is it used for?</p> <p>6 Q. Yes.</p> <p>7 MR. SELFRIDGE: Well, I'm going to</p> <p>8 interpose a lack of foundation and speculation</p> <p>9 objection.</p> <p>10 You may answer the question if you can.</p> <p>11 THE WITNESS: Well, in some cases, it's</p> <p>12 used, as I indicated, for rebate contracts. In</p> <p>13 other cases, it's used for the price at which retail</p> <p>14 and mail-order pharmacy contracts are negotiated</p> <p>15 from.</p> <p>16 BY MR. MANGI:</p> <p>17 Q. Certainly it's fair to say that average</p> <p>18 wholesale price is a misnomer, which is to say it's</p> <p>19 not really an average of wholesale prices, correct?</p> <p>20 MR. SELFRIDGE: Calls for --</p> <p>21 THE WITNESS: I can't answer. I don't</p> <p>22 know.</p>

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<p style="text-align: right;">34</p> <p>1 BY MR. MANGI:</p> <p>2 Q. Well, let me ask it another way. You're</p> <p>3 aware that wholesalers will purchase drugs at WAC or</p> <p>4 an amount below WAC depending on the rebates and</p> <p>5 discounts that they get, correct?</p> <p>6 A. Yes.</p> <p>7 Q. You're also aware that WAC is a different</p> <p>8 number from AWP, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Indeed, the AWP will generally be either</p> <p>11 20, 25 or 30 percent over the WAC for a drug, right?</p> <p>12 A. Right.</p> <p>13 Q. It's certainly fair to say that</p> <p>14 wholesalers and other entities in the market are not</p> <p>15 actually purchasing drugs at AWP; they're purchasing</p> <p>16 at WAC or something below WAC, right?</p> <p>17 MR. WILLIAMS: Calls for speculation.</p> <p>18 MR. SELFRIDGE: Also lack of foundation.</p> <p>19 BY MR. MANGI:</p> <p>20 Q. You can answer.</p> <p>21 A. Generally, yes.</p> <p>22 Q. Indeed, you're not personally aware of any</p>	<p style="text-align: right;">36</p> <p>1 Q. Indeed, there will be no settled</p> <p>2 percentage differential between the two of those</p> <p>3 numbers, the actual acquisition costs on the one</p> <p>4 hand and the AWP for that drug on the other, right?</p> <p>5 A. Right.</p> <p>6 Q. Will vary from entity to entity, drug to</p> <p>7 drug depending on the leverage that those entities</p> <p>8 have and their ability to exact differential rebate</p> <p>9 and discounts from drug manufacturers, right?</p> <p>10 A. Yes.</p> <p>11 Q. And certainly Health Net has no fixed</p> <p>12 expectation or has no expectation that there is, in</p> <p>13 fact, a fixed relationship between actual</p> <p>14 acquisition and AWP, correct?</p> <p>15 MR. WILLIAMS: Objection; lack of</p> <p>16 foundation.</p> <p>17 THE WITNESS: Correct.</p> <p>18 BY MR. MANGI:</p> <p>19 Q. In other words, Health Net recognizes that</p> <p>20 the relationship between the actual acquisition cost</p> <p>21 for a drug and the AWP for a drug will vary widely</p> <p>22 depending on the amounts of rebates or discounts</p>
<p style="text-align: right;">35</p> <p>1 single entity that purchases at AWP, correct?</p> <p>2 MR. WILLIAMS: Lack of foundation.</p> <p>3 THE WITNESS: Am I aware? I'm not aware.</p> <p>4 BY MR. MANGI:</p> <p>5 Q. Okay. Now, we've discussed a couple of</p> <p>6 different things. We've discussed WAC, and we've</p> <p>7 discussed the fact that the price at which entities</p> <p>8 in the market acquire drugs will be a percentage</p> <p>9 below WAC that varies depending on the amount of the</p> <p>10 rebate or discount that entity gets on that drug,</p> <p>11 right?</p> <p>12 A. Right.</p> <p>13 Q. We've discussed AWP, which is a benchmark</p> <p>14 that is either 20 or 25, sometimes 30 percent above</p> <p>15 the WAC for given drugs, right?</p> <p>16 A. Right.</p> <p>17 Q. So it's fair to say, isn't it, that the</p> <p>18 relationship between any individual entity's</p> <p>19 acquisition cost for drugs and the AWP for that drug</p> <p>20 will vary depending on the amount of rebates or</p> <p>21 discounts that that entity is getting, right?</p> <p>22 A. Right.</p>	<p style="text-align: right;">37</p> <p>1 that the purchasing entity can get from the</p> <p>2 manufacturer.</p> <p>3 A. Right.</p> <p>4 Q. So certainly, if one were to say that,</p> <p>5 well, you know Health Net expects that there will be</p> <p>6 a fixed relationship of, say, 20 percent or 30</p> <p>7 percent or 40 percent, there would be absolutely no</p> <p>8 foundation for that, correct?</p> <p>9 A. Correct.</p> <p>10 Q. That would be simply an inaccurate</p> <p>11 assumption that lacks any foundation whatsoever,</p> <p>12 right?</p> <p>13 MR. WILLIAMS: I'll object as ambiguous.</p> <p>14 Also calls for speculation.</p> <p>15 MR. SELFRIDGE: It's an argumentative</p> <p>16 question, but you can answer.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. MANGI:</p> <p>19 Q. Now, let's talk for a moment about generic</p> <p>20 drugs. Actually, withdraw that.</p> <p>21 Do you know at what rate Health Net can't</p> <p>22 reimburse doctors for drugs that they administer to</p>

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<p style="text-align: right;">38</p> <p>1 patients in their offices?</p> <p>2 A. I don't have any knowledge of that.</p> <p>3 Q. And that -- and your lack of knowledge on</p> <p>4 that topic applies equally to brand-name drugs and</p> <p>5 generic drugs; is that correct?</p> <p>6 A. You're talking about administered by a</p> <p>7 physician?</p> <p>8 Q. Right.</p> <p>9 A. That would be correct.</p> <p>10 Q. Now, turning to a different topic. Are</p> <p>11 you aware of any efforts that Health Net</p> <p>12 Pharmaceutical Services undertakes to manage its</p> <p>13 costs in relation to reimbursement for drugs?</p> <p>14 A. Yes.</p> <p>15 Q. Could you describe for me, please, the</p> <p>16 efforts that you are aware of in that regard.</p> <p>17 A. Well, we have contracts with our retail</p> <p>18 and mail-order providers. We have rebate contracts</p> <p>19 that reduce the unit cost of drugs. We have</p> <p>20 utilization management efforts that help to make</p> <p>21 sure that there's the appropriate utilization of</p> <p>22 drugs.</p>	<p style="text-align: right;">40</p> <p>1 physician-administered drugs?</p> <p>2 A. There are efforts that would be applied to</p> <p>3 both, but not all of the efforts would apply to</p> <p>4 both.</p> <p>5 Q. Okay. What efforts are you aware of to</p> <p>6 where it's managing the cost of reimbursement that</p> <p>7 apply to physician-administered drugs?</p> <p>8 A. We have a rebate contract for a drug</p> <p>9 that's physician-administered. Our utilization</p> <p>10 management efforts do not necessarily affect the</p> <p>11 reimbursement of the drug of any -- the cost of any</p> <p>12 unit price of a particular drug, but they do affect</p> <p>13 the overall expenditure of -- of a drug in total.</p> <p>14 Q. What proportion of Health Net's</p> <p>15 reimbursement costs for drugs are attributable to</p> <p>16 physician-administered drugs as opposed to pharmacy-</p> <p>17 dispensed drugs?</p> <p>18 A. That, I don't know.</p> <p>19 Q. It's fair to say, isn't it, though, that</p> <p>20 the amount that Health Net reimburses in relation to</p> <p>21 physician-administered drugs is still a significant</p> <p>22 amount of money, correct?</p>
<p style="text-align: right;">39</p> <p>1 Q. Anything else?</p> <p>2 A. No.</p> <p>3 Q. Now, these efforts that you've described,</p> <p>4 are you aware of these applying both to possibly</p> <p>5 reimbursing pharmacy-dispensed drugs and physician-</p> <p>6 administered drugs, or are you only aware of these</p> <p>7 issues in relation to pharmacy-dispensed drugs?</p> <p>8 MR. SELFRIDGE: Adeel, would you mind</p> <p>9 repeating that question? I think a word got omitted</p> <p>10 on the speaker here.</p> <p>11 MR. MANGI: Let me rephrase it. It wasn't</p> <p>12 the most elegant question anyway.</p> <p>13 Q. You referred to your knowledge of</p> <p>14 utilization management efforts and contracts as some</p> <p>15 examples of the ways in which Health Net seeks to</p> <p>16 manage the cost of its reimbursement for drugs,</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. My question is, are you aware of those</p> <p>20 efforts only in regard to retail-pharmacy-dispensed</p> <p>21 drugs and mail-order-pharmacy-dispensed drugs, or</p> <p>22 are those efforts also applied to where it's</p>	<p style="text-align: right;">41</p> <p>1 MR. SELFRIDGE: Calls for speculation,</p> <p>2 lack of foundation.</p> <p>3 MR. WILLIAMS: Same objection.</p> <p>4 MR. SELFRIDGE: You may answer.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. MANGI:</p> <p>7 Q. And indeed, Health Net, as part of its</p> <p>8 responsibilities towards its clients as well as its</p> <p>9 own financial health, pays careful attention to the</p> <p>10 amounts that it's reimbursing physicians in relation</p> <p>11 to drugs administered in-office, correct?</p> <p>12 MR. SELFRIDGE: Same objections.</p> <p>13 THE WITNESS: Generally, yes.</p> <p>14 BY MR. MANGI:</p> <p>15 Q. That's nothing new, correct? Health Net</p> <p>16 has always done that as part of its -- fulfilling</p> <p>17 its responsibilities towards its clients and its own</p> <p>18 financial health, correct?</p> <p>19 A. Yes.</p> <p>20 MR. WILLIAMS: Objection; overbroad.</p> <p>21 BY MR. MANGI:</p> <p>22 Q. I'm sorry. The answer cut out because of</p>

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<p style="text-align: right;">42</p> <p>1 the objection. Would you mind repeating it?</p> <p>2 A. "Generally, yes."</p> <p>3 Q. Are you aware of the manner in which</p> <p>4 pharmacies submit claims to Health Net for</p> <p>5 reimbursement?</p> <p>6 (Interruption)</p> <p>7 THE REPORTER: Submit what, Counsel?</p> <p>8 BY MR. MANGI:</p> <p>9 Q. Submit claims for reimbursement in</p> <p>10 relation to drugs that they have dispensed to Health</p> <p>11 Net's members.</p> <p>12 A. I'm aware in a general way, yes.</p> <p>13 Q. Now, those claims are submitted by</p> <p>14 reference to a particular drug's NDC, right?</p> <p>15 A. Yes. Through the -- yes. On the pharmacy</p> <p>16 side of the business, yes.</p> <p>17 Q. Now, what about drugs that are</p> <p>18 administered by physicians in-office? Are you aware</p> <p>19 of how physicians submit claims for reimbursement in</p> <p>20 relation to those drugs?</p> <p>21 A. Only very generally.</p> <p>22 Q. Are you aware of whether physicians submit</p>	<p style="text-align: right;">44</p> <p>1 Q. When you say "not necessarily," are there</p> <p>2 instances in which Health Net does have that</p> <p>3 information?</p> <p>4 A. In some cases, there may be a one-to-one</p> <p>5 relationship between a J-code and an NDC code.</p> <p>6 Q. Okay.</p> <p>7 A. In some cases, the NDC code may be</p> <p>8 supplied along with a particular J-code.</p> <p>9 Q. In what circumstances do physicians submit</p> <p>10 both an NDC and a J-code?</p> <p>11 A. That, I don't know.</p> <p>12 Q. Do you know whether that's a -- how</p> <p>13 prevalent that practice is?</p> <p>14 A. I don't know.</p> <p>15 MR. SELFRIDGE: Calls --</p> <p>16 MR. MANGI: I'm sorry. Was there an</p> <p>17 objection?</p> <p>18 MR. SELFRIDGE: I'm not going to make the</p> <p>19 objection in light of the answer.</p> <p>20 THE WITNESS: The answer I don't know.</p> <p>21 BY MR. MANGI:</p> <p>22 Q. Do you know whether that occurs</p>
<p style="text-align: right;">43</p> <p>1 claims referring to drugs by their NDCs or by</p> <p>2 something else?</p> <p>3 A. I would imagine that it could be both.</p> <p>4 It's primarily done by J-code.</p> <p>5 Q. Now, a J-code is not also specific to a</p> <p>6 particular branded drug, correct?</p> <p>7 A. Correct.</p> <p>8 Q. There can be more than one drug sharing</p> <p>9 the same J-code, correct?</p> <p>10 A. Correct.</p> <p>11 Q. There can be more than one branded drug in</p> <p>12 a particular J-code, right?</p> <p>13 A. Yes.</p> <p>14 Q. There can be a branded drug and its</p> <p>15 generic competitors. They're sharing a code, right?</p> <p>16 A. Yes.</p> <p>17 Q. When Health Net receives a claim for a</p> <p>18 drug that lists only the J-code, Health Net has no</p> <p>19 visibility as to what particular NDC -- what</p> <p>20 particular drug was dispensed -- was administered by</p> <p>21 that physician, correct?</p> <p>22 A. Not necessarily.</p>	<p style="text-align: right;">45</p> <p>1 irregularly, or is it common practice?</p> <p>2 MR. SELFRIDGE: Calls for speculation,</p> <p>3 lack of foundation.</p> <p>4 THE WITNESS: I don't know.</p> <p>5 BY MR. MANGI:</p> <p>6 Q. You're simply unable to -- you have no</p> <p>7 information as to whether it's common, infrequent,</p> <p>8 once in a while, or every time, right?</p> <p>9 A. Yes.</p> <p>10 Q. In relation to instances where Health Net</p> <p>11 has only a J-code to deal with and there isn't a</p> <p>12 one-to-one relationship, are you aware of any</p> <p>13 efforts by Health Net to try and ascertain what NDCs</p> <p>14 particular J-codes correspond to?</p> <p>15 A. I am aware of an attempt to try and match</p> <p>16 J-codes to NDC codes.</p> <p>17 Q. Now, are we talking about one attempt, or</p> <p>18 was there more than one attempt to do that?</p> <p>19 A. That, I don't know.</p> <p>20 Q. When you say you're referring to an</p> <p>21 attempt, were you referring to one particular</p> <p>22 instance or more than one instance?</p>

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<p style="text-align: right;">46</p> <p>1 A. Are you talking about just the matching of</p> <p>2 one J-code to an NDC code or overall attempt to take</p> <p>3 all of the J-codes and match and to somehow map to</p> <p>4 NDC codes?</p> <p>5 Q. Well, let's start with an overall attempt.</p> <p>6 Are you aware of any attempts to do that on a broad</p> <p>7 basis?</p> <p>8 A. I'm aware of it, yes.</p> <p>9 Q. Are you aware of one attempt to do that or</p> <p>10 more than one attempt to do that?</p> <p>11 A. I'm aware of one attempt to do that.</p> <p>12 Q. When did that take place?</p> <p>13 A. What I am aware of would have been around</p> <p>14 1993.</p> <p>15 Q. I'm sorry. Did you say 1993?</p> <p>16 A. I'm sorry. I'm in the wrong decade. 2003.</p> <p>17 Q. 2003. Who was involved in that effort?</p> <p>18 A. The person that I know?</p> <p>19 Q. Sure.</p> <p>20 A. Peter Kwok.</p> <p>21 Q. Who is Peter Kwok? And could you spell</p> <p>22 his name for the reporter?</p>	<p style="text-align: right;">48</p> <p>1 A. Correct.</p> <p>2 Q. Now, that's the overall attempt that we</p> <p>3 spoke about. Do you differentiate between an</p> <p>4 overall attempt and an individual attempt in</p> <p>5 relation to specific J-codes? Are you aware of more</p> <p>6 limited efforts to cross-walk J-codes to NDCs?</p> <p>7 A. No.</p> <p>8 Q. Now, in what department at Health Net is</p> <p>9 responsible for determining the amount that Health</p> <p>10 Net will pay pharmacies in relation to drugs that</p> <p>11 they dispense to Health Net's members?</p> <p>12 A. Can you repeat -- I'm sorry. Repeat the</p> <p>13 question, please.</p> <p>14 Q. What department or division at Health Net</p> <p>15 or Health Net Pharmaceutical Services is responsible</p> <p>16 for determining the rate at which Health Net will</p> <p>17 reimburse retail pharmacies for drugs that are</p> <p>18 dispensed to Health Net's members?</p> <p>19 A. That would be HNPS. That would be us.</p> <p>20 Q. Is there a particular division within HNPS</p> <p>21 that deals with that issue?</p> <p>22 A. There are individuals assigned to do that.</p>
<p style="text-align: right;">47</p> <p>1 A. Yeah. It's P-e-t-e-r, K-w-o-k. And he</p> <p>2 was a vice president of specialty pharmacy.</p> <p>3 Q. That is the position that's now held by</p> <p>4 Ms. Ferro, right?</p> <p>5 A. Correct.</p> <p>6 Q. What was the circumstances in which Mr.</p> <p>7 Kwok made that attempt to translate or cross-walk J-</p> <p>8 codes to NDC?</p> <p>9 A. Not aware of any of the specifics about</p> <p>10 what he -- he was working on. I was just aware that</p> <p>11 that was taking place.</p> <p>12 Q. You're aware it was taking place but you</p> <p>13 don't know why it was taking place, I take it?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know what the results of that</p> <p>16 effort were?</p> <p>17 A. No.</p> <p>18 Q. Do you know whether or not Mr. Kwok was</p> <p>19 successful in that effort?</p> <p>20 A. I do not know.</p> <p>21 Q. Is it fair to say you have no information</p> <p>22 about that effort other than an effort was made?</p>	<p style="text-align: right;">49</p> <p>1 It's -- this is not in our particular division.</p> <p>2 Q. Now, switching gears for a moment. Do you</p> <p>3 know what department or division within Health Net</p> <p>4 or Health Net Pharmaceutical Services is responsible</p> <p>5 for determining the rate that Health Net will</p> <p>6 reimburse doctors or physicians for drugs that they</p> <p>7 administer to Health Net's members in their offices?</p> <p>8 MR. SELFRIDGE: Lack of foundation and</p> <p>9 calls for speculation.</p> <p>10 THE WITNESS: That's outside of Health Net</p> <p>11 Pharmaceutical Services and done at the individual</p> <p>12 health plan level.</p> <p>13 BY MR. MANGI:</p> <p>14 Q. When you say "the individual health plan</p> <p>15 level," what are you referring to?</p> <p>16 A. The health plans that make up Health Net.</p> <p>17 Q. Now, the reimbursements for retail</p> <p>18 pharmacies are determined at Health Net</p> <p>19 Pharmaceutical Services on behalf of all of the</p> <p>20 health plans; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. The reimbursements for providers that are</p>

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<p style="text-align: right;">50</p> <p>1 administering drugs in their offices are determined</p> <p>2 at the individual health plan network, right?</p> <p>3 A. Yes.</p> <p>4 Q. Now, is there any coordination or</p> <p>5 communication between the individuals responsible</p> <p>6 for setting reimbursement to pharmacies, at Health</p> <p>7 Net Pharmaceutical Services, and the individuals</p> <p>8 responsible for setting reimbursement to physicians</p> <p>9 for drugs administered in-office at the individual-</p> <p>10 plan level?</p> <p>11 A. I'm going to say no, but I can't be sure</p> <p>12 because I'm not one of those two parties.</p> <p>13 Q. In other words, what you're saying is that</p> <p>14 you're not personally involved in any such</p> <p>15 communication, so you're not aware of any such</p> <p>16 communications, correct?</p> <p>17 A. Correct.</p> <p>18 Q. But you can't say definitively whether or</p> <p>19 not those communications or coordination ever takes</p> <p>20 place.</p> <p>21 A. That's correct.</p> <p>22 Q. Are you aware of the fact that there is</p>	<p style="text-align: right;">52</p> <p>1 his doctor who will administer Procrit to him and</p> <p>2 then bill the health insurer, correct?</p> <p>3 A. Yes.</p> <p>4 Q. In other cases, a patient will get Procrit</p> <p>5 from his retail pharmacy and then take it to a</p> <p>6 doctor who will administer it, right?</p> <p>7 A. That's possible.</p> <p>8 Q. In the first case, the physician is</p> <p>9 billing the health insurer for the drug; whereas, in</p> <p>10 the second case, it will be the pharmacy that will</p> <p>11 bill the insurer for the drug. Right?</p> <p>12 A. Yes.</p> <p>13 Q. Are you aware that Health Net reimburses</p> <p>14 at different rates for the same drug dependent on</p> <p>15 whether it's dispensed at a pharmacy or in a</p> <p>16 physician's office?</p> <p>17 A. I am not aware of the price that we</p> <p>18 reimburse from the physician's office, so I couldn't</p> <p>19 tell you if it was different or not.</p> <p>20 Q. Is that a topic as to which Ms. Ferro</p> <p>21 would be familiar with, to your knowledge?</p> <p>22 A. Perhaps.</p>
<p style="text-align: right;">51</p> <p>1 some drugs that can reach patients either through</p> <p>2 dispensing at retail pharmacies or through</p> <p>3 physicians' offices?</p> <p>4 A. Yes.</p> <p>5 Q. Are you familiar with the term -- well,</p> <p>6 withdraw that.</p> <p>7 In what circumstances are you familiar</p> <p>8 with drugs going through both channels?</p> <p>9 A. So -- I mean, under a traditional pharmacy</p> <p>10 benefit, a patient would obtain his or her</p> <p>11 medications at a retail or mail-order pharmacy. A</p> <p>12 patient could get primarily injectable medications</p> <p>13 either administered by a physician or obtained from</p> <p>14 the physician.</p> <p>15 Q. So let's take an example. Are you</p> <p>16 familiar with the drug Procrit?</p> <p>17 A. Yes.</p> <p>18 Q. Are you aware that Procrit has both a</p> <p>19 retail channel and is also -- and patients also</p> <p>20 receive it in doctors' offices?</p> <p>21 A. Yes.</p> <p>22 Q. In some instances, a patient will go to</p>	<p style="text-align: right;">53</p> <p>1 MR. MANGI: Off the record for a moment.</p> <p>2 (Break taken.)</p> <p>3 BY MR. MANGI:</p> <p>4 Q. Mr. Wert, I'm just going to ask you a few</p> <p>5 more questions touching on some of the topics we've</p> <p>6 already discussed.</p> <p>7 First of all, we discussed the fact that</p> <p>8 entities in the marketplace purchase at WAC or a</p> <p>9 percentage below WAC depending on the rebates or</p> <p>10 discounts that they get. Do you remember that</p> <p>11 testimony?</p> <p>12 A. Yes.</p> <p>13 Q. We also discussed the fact that certainly,</p> <p>14 as far as you're aware, no one in the marketplace is</p> <p>15 actually purchasing drugs at AWP, right?</p> <p>16 MR. WILLIAMS: I'll object as overbroad.</p> <p>17 MR. SELFRIDGE: I'll object as</p> <p>18 mischaracterizing the witness's testimony.</p> <p>19 BY MR. MANGI:</p> <p>20 Q. You can answer.</p> <p>21 A. Yes.</p> <p>22 Q. My question is, is it fair to say that</p>

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<p style="text-align: right;">54</p> <p>1 that fact, that no one is actually purchasing drugs</p> <p>2 at AWP, is something that's well known in the</p> <p>3 industry?</p> <p>4 MR. SELFRIDGE: Calls for speculation,</p> <p>5 lack of foundation.</p> <p>6 MR. WILLIAMS: I'll join in that</p> <p>7 objection.</p> <p>8 BY MR. MANGI:</p> <p>9 Q. You can answer.</p> <p>10 A. I don't know.</p> <p>11 Q. I'm sorry. What did you answer?</p> <p>12 A. Yeah, "I don't know."</p> <p>13 Q. You don't know. Okay.</p> <p>14 Now, you talked about the fact that you</p> <p>15 played a role on the P&T committee while you were a</p> <p>16 clinical pharmacist, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Did you remain on the P&T committee in</p> <p>19 your subsequent roles at Health Net Pharmaceutical</p> <p>20 Services or its predecessor entities?</p> <p>21 A. Yes. I would make a distinction that my</p> <p>22 role now is not one of a voting member but a -- as a</p>	<p style="text-align: right;">56</p> <p>1 A. Yes.</p> <p>2 Q. Now, we also discussed the fact that</p> <p>3 Health Net is aware that the acquisition costs that</p> <p>4 any particular entity pays for drugs will vary</p> <p>5 depending on the rebate or the discount that it</p> <p>6 receives, right?</p> <p>7 A. Yes.</p> <p>8 Q. Therefore, as we discussed earlier, Health</p> <p>9 Net's aware that the actual acquisition price that</p> <p>10 any entity pays to acquire drugs bears no</p> <p>11 predictable relationship to the AWP for that drug,</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. And similarly, that's something that's</p> <p>15 commonly known in the industry, right?</p> <p>16 MR. WILLIAMS: Objection; calls for</p> <p>17 speculation.</p> <p>18 MR. SELFRIDGE: Lack of foundation also.</p> <p>19 Join.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. MANGI:</p> <p>22 Q. And similarly, that's something that's</p>
<p style="text-align: right;">55</p> <p>1 participant in the meeting who provides information.</p> <p>2 Q. Now, you mentioned that economic</p> <p>3 considerations -- in other words, the amount of</p> <p>4 rebates available -- is one of the factors that</p> <p>5 Health Net Pharmaceutical Services considers when</p> <p>6 making its formulary choices, right?</p> <p>7 A. Yes.</p> <p>8 Q. And certainly it's fair to say that Health</p> <p>9 Net's aware that other health insurance plans in the</p> <p>10 industry function in the same way. That's common</p> <p>11 knowledge, right?</p> <p>12 A. Yes.</p> <p>13 Q. And similarly, Health Net understands that</p> <p>14 other entities in the marketplace that are receiving</p> <p>15 rebates from drug manufacturers will similarly</p> <p>16 consider those rebates as one factor when deciding</p> <p>17 what drug to use, right?</p> <p>18 A. Yes.</p> <p>19 Q. Similarly, that's something that's well</p> <p>20 known in the industry and indeed has been well known</p> <p>21 since -- well, for at least the past 20 years,</p> <p>22 right?</p>	<p style="text-align: right;">57</p> <p>1 been well known for a long time, at least going back</p> <p>2 20 years, right?</p> <p>3 MR. WILLIAMS: Same objection.</p> <p>4 MR. SELFRIDGE: Join.</p> <p>5 BY MR. MANGI:</p> <p>6 Q. You can answer.</p> <p>7 A. Can't be certain on the 20 years, but</p> <p>8 sometime, yes.</p> <p>9 Q. It's certainly been well known since the</p> <p>10 advent of managed care in the late '80s and early</p> <p>11 '90s, right?</p> <p>12 MR. WILLIAMS: Same objection.</p> <p>13 THE WITNESS: That, I don't know. I could</p> <p>14 say that since my career started in 1994 that that</p> <p>15 would be the case.</p> <p>16 BY MR. MANGI:</p> <p>17 Q. And indeed, at the time that your career</p> <p>18 started in 1994, it was already well known, right?</p> <p>19 MR. WILLIAMS: Same objection.</p> <p>20 MR. SELFRIDGE: Join.</p> <p>21 THE WITNESS: That, I don't know.</p> <p>22 BY MR. MANGI:</p>

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<p style="text-align: right;">58</p> <p>1 Q. But you're aware of it, since at least</p> <p>2 1994, being the fact that it's commonly known in the</p> <p>3 industry?</p> <p>4 A. Yes.</p> <p>5 MR. WILLIAMS: Same objection.</p> <p>6 THE WITNESS: Yes.</p> <p>7 MR. MANGI: Now, let's pause for just a</p> <p>8 couple of minutes. Let me look through my notes,</p> <p>9 and we should be about done with this witness.</p> <p>10 (Pause in proceedings.)</p> <p>11 MR. MANGI: I have nothing further for</p> <p>12 this witness at this time.</p> <p>13 Brian, do you have any questions?</p> <p>14 MR. FEDOTIN: No. I think you covered</p> <p>15 everything very well.</p> <p>16 MR. MANGI: Kent?</p> <p>17 MR. WILLIAMS: I have no questions.</p> <p>18 MR. MANGI: Mr. Wert, thank you for your</p> <p>19 time.</p> <p>20 THE WITNESS: You're welcome.</p> <p>21 MR. MANGI: We can move on to the next</p> <p>22 witness.</p>	<p style="text-align: right;">60</p> <p>1 MR. MANGI: Yeah. We're on an expedited</p> <p>2 schedule, so we would request that changes within 30</p> <p>3 days be possible. And, of course, also -- well, the</p> <p>4 nature of any changes is something that we can deal</p> <p>5 with if it becomes an issue.</p> <p>6 MR. SELFRIDGE: Yeah, that's fine. So</p> <p>7 I'll take it upon myself the responsibility of</p> <p>8 notifying the three other counsel besides myself</p> <p>9 present today --</p> <p>10 MR. MANGI: Okay.</p> <p>11 MR. SELFRIDGE: -- of those changes.</p> <p>12 Let me give my e-mail address to Mr.</p> <p>13 Williams and Mr. Fedotin and ask you to shoot me</p> <p>14 back a return e-mail so that I'll have your contact</p> <p>15 information. My e-mail address is</p> <p>16 lances@lbbslaw.com.</p> <p>17 And I'll ask the reporter while we're</p> <p>18 still on the record to make sure I get a copy of the</p> <p>19 transcript with a word index.</p> <p>20 (Counsel went off the record.)</p> <p>21 MR. SELFRIDGE: And while we're still on</p> <p>22 the record, I'll ask the reporter to make sure that</p>
<p style="text-align: right;">59</p> <p>1 MR. SELFRIDGE: Okay. Adeel, what are we</p> <p>2 doing in this case in terms of stipulations? You</p> <p>3 know, I know you guys in the East Coast don't</p> <p>4 usually do that. Here in California we usually do.</p> <p>5 Do you want to do a stipulation as to the handling</p> <p>6 of the transcript, or just what?</p> <p>7 (Counsel went off the record.)</p> <p>8 MR. SELFRIDGE: The discussion off the</p> <p>9 record has concerned the standard protocols, in this</p> <p>10 litigation, for handling the transcript. About the</p> <p>11 only thing that we will add to that is that Mr. Wert</p> <p>12 will have 30 days to read the transcript and make</p> <p>13 any changes he wishes to make.</p> <p>14 I suppose it would be best if we stipulate</p> <p>15 that he send his changes to me and then I will</p> <p>16 notify the counsel present today of those changes.</p> <p>17 Is that acceptable?</p> <p>18 MR. MANGI: Yeah, that's fine so long as,</p> <p>19 you know, we receive any changes within 30 days.</p> <p>20 MR. SELFRIDGE: Or shortly thereafter.</p> <p>21 He's got 30 days to look at it, and I'd turn it</p> <p>22 right around if he made any changes.</p>	<p style="text-align: right;">61</p> <p>1 I get a copy of the transcript with a word index,</p> <p>2 please.</p> <p>3 (Counsel went off the record.)</p> <p>4 MR. MANGI: Are we ready for the next</p> <p>5 witness?</p> <p>6 MR. SELFRIDGE: Yeah. Let's close out</p> <p>7 this record and start a new one, then, for Karen</p> <p>8 Ferro.</p> <p>9 (Deposition concluded at 11:26 a.m.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p>62</p> <p>1 STATE OF CALIFORNIA)</p> <p>2) ss.</p> <p>3 COUNTY OF SAN FRANCISCO)</p> <p>4</p> <p>5 I, the undersigned, declare under penalty of</p> <p>6 perjury that I have read the foregoing transcript,</p> <p>7 and I have made any corrections, additions, or</p> <p>8 deletions that I was desirous of making; that the</p> <p>9 foregoing is a true and correct transcript of my</p> <p>10 testimony contained therein.</p> <p>11 EXECUTED this ____ day of _____,</p> <p>12 2006, at _____,</p> <p>13 (City) (State)</p> <p>14</p> <p>15 _____</p> <p>16 SCOTT WERT</p> <p>17</p> <p>18 Subscribed and sworn to and before me</p> <p>19 this ____ day of _____, 20 ____.</p> <p>20</p> <p>21 _____</p> <p>22 Notary Public</p>	<p>63</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 I, RICHARD M. RAKER, CSR #3445, Certified</p> <p>3 Shorthand Reporter, certify:</p> <p>4 That the foregoing proceedings were taken</p> <p>5 before me at the time and place therein set forth, at</p> <p>6 which time the witness was put under oath by me;</p> <p>7 That the testimony of the witness and all</p> <p>8 objections made at the time of the examination were</p> <p>9 recorded stenographically by me and were thereafter</p> <p>10 transcribed;</p> <p>11 That the foregoing is a true and correct</p> <p>12 transcript of my shorthand notes so taken.</p> <p>13 I further certify that I am not a relative</p> <p>14 or employee of any attorney or of any of the parties,</p> <p>15 nor financially interested in the action.</p> <p>16 I declare under penalty of perjury under the</p> <p>17 laws of the State of California that the foregoing is</p> <p>18 true and correct.</p> <p>19 Dated this 13th day of February, 2006.</p> <p>20</p> <p>21 _____</p> <p>22 RICHARD M. RAKER, C.S.R. No. 3445</p>
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